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RECEIVED

JAN 16 2007

**CITY OF SANTA BARBARA
PLANNING DIVISION**

January 16, 2007

VIA HAND DELIVERY:

Ms. Allison DeBusk, Associate Planner
Planning Division
City of Santa Barbara
630 Garden Street
Santa Barbara, California 93101

Re: DART Review for 561 W. Mountain Drive, MST #2004-00206

Dear Allision:

Enclosed is my final draft of the CC&Rs for maintenance of Private Road and Formation of Private Road Owner's Association.

Sincerely,


Douglas E. Fell

DEF/mmt
Enclosure

cc: Greg Parker, Esq. (w/encl.)
Mr. Brent Daniels (w/encl.)

Recording Requested by; and
When Recorded, Return to:

Jorgensen Ranch, LLC
200 E. Carrillo Street, Suite 200
Santa Barbara, CA 93101
Attn: Manager

(Space above this line for Recorder's use only)

APN's _____

The undersigned declares that
the Documentary Transfer Tax
is \$ 0.00, based on:

☐ Full value of property ☐ Grantor's unencumbered equity
☐ Value less than \$100 ☒ No beneficial ownership change

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MAINTENANCE OF PRIVATE ROAD
AND
FORMATION OF PRIVATE ROAD OWNERS' ASSOCIATION
(Jorgensen Lane)

THIS DECLARATION (the "Declaration") is made, effective on the date set forth below, by **JORGENSEN RANCH, LLC, a California limited liability company** (the "Declarant"), with reference to the following facts:

RECITALS:

A. The Declarant owns the real property located in the City of Santa Barbara, State of California, more particularly described as follows: Parcels 1-4, inclusive, as described and depicted on Parcel Map _____, as per Map recorded in Book _____, Pages _____ through _____ of Official Maps of Santa Barbara County, California (the "Final Map"). (All of the real property described in this Recital A shall sometimes be referred to collectively as the "Property" and individually each parcel shall be referred to as a "Parcel").

B. Declarant has offered to dedicate to the City of Santa Barbara (the "Offer to Dedicate") a public road to serve all of the Parcels, consisting of a twenty (20) foot wide roadway including adjacent designated parking areas known as Jorgensen Lane providing access to each of the Parcels as depicted on the Final Map.

C. As a condition of the City of Santa Barbara's approval of the Final Map, Declarant has agreed to establish a general plan, set forth in this Declaration, for the maintenance of Jorgensen Lane as a private road prior to the City's acceptance of the Offer to Dedicate, and the performance and enforcement of certain rights and obligations described herein connection therewith, and desires to describe the rights and obligations of Declarant and its respective successors in interest in accordance with that plan.

D. Declarant therefore intends by this Declaration to impose on the Property and on each individual Parcel mutually beneficial restrictions under the general plan for the benefit of the Parcels and their successive owners.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property, and each of the Parcels, are and shall be held, conveyed, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, servitudes, liens, restrictions, licenses, charges and easements, all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development of the Property, and all of which are declared and agreed to be for the purpose of maintaining and improving the roadway known as Jorgensen Lane.

These provisions are imposed on Declarant and are for the benefit of all of the Parcels and shall bind Declarant. These provisions shall be a burden on, and a benefit to, not only the Declarant but also to its respective successors and assigns. All covenants are intended as, and are declared to be, covenants running with the land as well as equitable servitudes on the Property.

1 DEFINITIONS

1.1 Association. The "Association" shall mean the unincorporated private road owners' association created pursuant to Section 5, below.

1.2 City. "City" shall mean the City of Santa Barbara, State of California.

1.3 City Street Standards. "City Street Standards" shall mean the standards adopted by the City from time to time for the inspection, maintenance, repair, slurry coating, chip sealing and repaving of public streets that are applicable to Mountain Drive between Mission Canyon Road and Gibraltar Road in the City. The current City Street Standards are attached hereto as Exhibit A and are incorporated herein by this reference. Any modifications made by the City to the City Street Standards shall automatically be deemed to be a modification of Exhibit A. The President of the Association is hereby authorized and instructed to record an amendment to this Declaration setting forth any modified City Street Standards adopted by the City from time to time.

1.4 Contribution Due Date. The "Contribution Due Date" shall be January 1, April 1, July 1 and October 1 of each year.

1.5 Drainage Channel. The "Drainage Channel" means the area depicted as such on Exhibit D.

1.6 Entranceway Improvements. The "Entranceway Improvements" means (a) the entranceway pillars, (b) a water meter in the name of the Association that serves only the irrigation of the landscaping located on the Entranceway Landscape Easement, (c) all irrigation timers, valves, systems and devices that distribute irrigation to the Shared Landscaping, (d) the Shared Landscaping, itself, (e) an electrical meter in the name of the Association that serves the irrigation timers and any other electrical improvements located in the Entranceway Landscape Easement, and (e) any such other electrical improvements.

1.7 Entranceway Landscape Easement. The "Entranceway Landscape Easement" shall mean that portion of Parcel 1 and Parcel 6 of the Final Map labeled thereon as the Entranceway Landscape Easement.

1.8 Fire Hydrant Testing Obligation. The "Fire Hydrant Testing Obligation" shall mean the regular testing of the Fire Suppression Facilities in accordance with the Fire Hydrant Testing Standards, and the prompt reporting of the results of such testing to the City. From and after the acceptance by the City of the Offer to Dedicate, the Fire Hydrant Testing Obligation shall exclude any testing obligation assumed by the City pursuant to such acceptance.

1.9 Fire Hydrant Testing Standards. The "Fire Hydrant Testing Standards" means the standards adopted by the City from time to time for the inspection, maintenance, and periodic testing of fire hydrants located on public streets in the City. The current City Fire Hydrant Testing Standards are attached hereto as Exhibit B and are incorporated herein by this reference. Any modifications made by the City to the Fire Hydrant Testing Standards shall automatically be deemed to be a modification of Exhibit B. The President of the Association is hereby authorized and instructed to record an amendment to this Declaration setting forth any modified Fire Hydrant Testing Standards adopted by the City from time to time.

1.10 Fire Suppression Facilities. The "Fire Suppression Facilities" shall mean the fire hydrants serving the Property, together with all associated water mains, valves, equipment and lines.

1.11 Jorgensen Lane. "Jorgensen Lane" means the approximately twenty (20) foot wide paved road including adjacent designated parking areas running northerly, then westerly from the Mountain Drive Easement Segment, as shown on the Final Map. Jorgensen Lane and the Mountain Drive Easement Segment are both depicted on Exhibit C, attached hereto.

1.12 Maintenance Costs. "Maintenance Costs" shall include (a) the costs and expenses incurred in connection with the care, repair, replacement, operation, modification, maintenance or improvement of the Shared Improvements, (b) the costs of performing and complying with the Fire Hydrant Testing Obligation and the Road Maintenance Obligation, (c) the costs and expenses incurred in connection with the care, repair, replacement, operation, modification, maintenance or improvement of the improvements to the Mountain Drive Easement Segment that is properly allocable to the Owners, (d) arbitration costs and the costs of enforcing this Declaration to the extent provided herein, (e) all costs and expenses incurred in connection with the formation and operation of the Association, including legal, accounting, and other professional fees, and the costs of supplies and of any employees or independent contractors of the Association, (f) the premiums for the insurance maintained by the Association, and (g) any other costs and/or expenses which may become a charge against an Owner pursuant hereto. Maintenance Costs incurred by the Owners may be reduced, pro rata, to the extent that owners of other real property that utilize a portion of the Mountain Drive Easement Segment contribute to the costs and expenses of maintaining that segment.

1.13 Mountain Drive Easement Segment. "Mountain Drive Easement Segment" means the private easement drive that lies between the southerly portion of Jorgensen Lane and Mountain Drive, a public street located in the City. The Mountain Drive Easement Segment provides access to the Property as well as adjacent properties.

1.14 Owner. "Owner" means any person or entity holding a record ownership interest in any Parcel. Owner does not include any person or entity holding an interest in a Parcel solely as security for the performance of an obligation.

1.15 Offer to Dedicate. "Offer to Dedicate" means the offer to dedicate Jorgensen Lane as a public road set forth in that certain Offer to Dedicate Public Road recorded in Book ___, Pages ___ through ___ of Official Records of Santa Barbara County, California

1.16 Proportionate Share. "Proportionate Share" means Twenty-Five Percent (25%).

1.17 Road Maintenance Obligation. "Road Maintenance Obligation" means the regular maintenance of the Fire Suppression Facilities, Jorgensen Lane and the Mountain Drive Easement Segment at all times in accordance with the greater of (a) the City Street Standards or (b) a maintenance schedule that would require that Jorgensen Lane and the Mountain Drive Easement Segment be re-sealed not less than every five (5) years, and re-paved not less than every twenty (20) years. The Road Maintenance Obligation shall also include any unscheduled or irregular maintenance or repair of Jorgensen Lane and the Mountain Drive Easement Segment required in order to maintain Jorgensen Lane and the Mountain Drive Easement Segment in full compliance with the requirements of the Fire Department to serve as access to the Property for fire suppression or inspection purposes. From and after the acceptance by the City of the Offer to Dedicate, the Road Maintenance Obligation shall exclude any maintenance obligation assumed by the City pursuant to such acceptance.

1.18 Shared Improvements. "Shared Improvements" means all Entranceway Improvements, the Fire Suppression Facilities and Jorgensen Lane and all foundation, paving, base, drainage facilities, retaining walls and other improvements of every kind of nature whatsoever associated with Jorgensen Lane. From and after the acceptance by the City of the Offer to Dedicate, the Shared Improvements shall exclude any improvements assumed by the City pursuant to such acceptance.

1.19 Shared Landscaping. "Shared Landscaping" means all of the landscaping installed from time to time on the Entranceway Landscape Easement and on the Mountain Drive Easement Segment.

2 RECIPROCAL EASEMENTS

2.1 Private Road Easement. Declarant has created for the benefit of each Parcel a reciprocal easement over Jorgensen Lane for the purpose of a private road providing ingress to and egress from each of the Parcels for all purposes whatsoever related to the ownership and use of such Parcels, including without limitation, the installation, maintenance, repair and replacement of (a) underground utilities serving the improvements for each of the Parcels, (b) drainage facilities sufficient to allow the drainage of each Parcel in the manner approved by the City, (c) the use and testing of Fire Suppression Facilities serving the Parcel whether by private parties or by the City, and (d) temporary access for areas immediately adjacent to Jorgensen Lane for the purposes of construction, repair and replacement of the any of the foregoing improvements, utilities, drainage facilities and/or Fire Suppression Facilities.

2.2 Entranceway Easement. Declarant has created for the benefit of each Parcel an easement for the installation, repair, maintenance and replacement of the Entranceway Improvements over the Entranceway Landscape Easement.

2.3 Nature of Easements. The easements referenced in Sections 2.1 and 2.2 are nonexclusive easements appurtenant to each of the Parcels comprising the Property. Declarant, and its successors and assigns, shall hold title to each Parcel subject to the nonexclusive easements referenced in Sections 2.1 and 2.2, and subject to the Offer to Dedicate.

3 REPAIRS AND MAINTENANCE; RESTRICTION

3.1 Mandatory Obligations. Each Owner and the Association formed pursuant to this Declaration shall at all times:

3.1.1 Maintain the Shared Improvements, Jorgensen Lane and the Mountain Drive Easement Segment in good and serviceable condition and repair. In no event shall Jorgensen Lane or the Mountain Drive Easement Segment be reduced in size or width, or be allowed to deteriorate to a condition which is unsuitable for access by emergency vehicles, including fire equipment.

3.1.2 Keep and perform the Fire Hydrant Testing Obligation and the Road Maintenance Obligation without any prior notice whatsoever.

3.1.3 Plant, water, trim and maintain the Shared Landscaping and shall keep and otherwise maintain the Shared Landscaping in a good condition and repair, suitable for their intended purposes.

3.1.4 Maintain, in good and serviceable condition and repair, the Drainage Channel.

3.2 **Unscheduled Maintenance.** The Association shall perform such unscheduled or nonrecurring testing or maintenance of the Shared Improvements as is authorized (a) in the case of an emergency or a failure to comply with one of the Mandatory Obligations set forth in Section 3.1, by the President of the Association, or (b) if not in the case of an emergency, by a majority vote of the Owners.

3.3 **Contracting for Work.** The Association shall engage a third party contractor acceptable to the City to perform the Fire Hydrant Testing Obligation. The Association may engage a third party gardener or contractor, who may also perform services for one or more of the Owners, in order to maintain the Shared Landscaping and Entranceway Improvements in a good and attractive condition, and pay a reasonable fee for such work. All repairs, maintenance and other work with respect to the Shared Improvements pursuant to the provisions of this Declaration costing more than Five Thousand Dollars (\$5,000) shall be contracted for with the contractor submitting the lowest responsible bid in response to a request for bids made by the President of the Association, unless a majority of the Owners agree in writing to employ some other contractor.

3.4 **Parking Restriction.** Jorgensen Lane has been designated a fire lane by the City. Jorgensen Lane is required to be maintained clear of any permanent or temporary obstructions. Therefore, no parking of vehicles and no other temporary or permanent obstruction shall be allowed at any time on Jorgensen Lane, excepting only those portions of Jorgensen Lane specifically designated for parking on the Final Map.

3.5 **Towing of Vehicles.** It shall be the Association's responsibility to cause to be towed any vehicle parked within the designated fire lane pursuant the Sections 22500 and 22658 of the California Vehicle Code.

3.6 **Gate Restriction.** In order to prevent any potential interference with fire protection vehicles, and to maintain harmony with the rural nature of the area, no gate shall be allowed to be constructed on Jorgensen Lane at any time.

4 **CITY LICENSE; THIRD PARTY BENEFICIARY**

4.1 **Grant of License to City.** Declarant hereby grants to the City a nonexclusive license over so much of the Property as is required for the purposes of permitting the City to access (a) Jorgensen Lane and the Mountain Drive Easement Segment for any purpose desired by the City, (b) the Fire Suppression Facilities to the extent necessary for the City to periodically test such facilities (should the City elect to do so), (c) any sewer mains shown on the Final Map, if any, that do not lie within previously granted City easements, and (d) the water meters serving each Parcel, to the extent necessary for the City to determine the amount of water use on each Parcel for billing purposes.

4.1.1 The license granted to the City pursuant to this Section 4.1 shall be an irrevocable, nonexclusive license, in gross, to the City. Each Owner of a Parcel shall hold title to such Parcel subject to the license granted pursuant to this Section 4.1.

4.1.2 The license granted to the City pursuant to this Section 4.1 shall be subject to the City's acceptance of same by resolution adopted by the Council of the City of Santa Barbara, a certified copy of which shall be attached to this Declaration.

4.2 **City Rights.** Declarant acknowledges and agrees that the City is the third party beneficiary of the referenced easements and grantee of the license created hereby and the undertakings by Declarant and subsequently by each of the Owners of the testing, maintenance, repair and replacement obligations described herein. Should the City elect to accept the Offer to Dedicate, which shall be specifically accomplished by subsequent resolution adopted by the Council of the City of Santa Barbara, a certified copy of which shall be recorded in the Official Records, in the Office of the County Recorder of the County of Santa Barbara, the rights of the City hereunder as to Jorgensen Lane and the Fire Suppression Facilities shall be governed by the terms of that acceptance. Prior to any such acceptance as to Jorgensen Lane and the Fire Suppression Facilities, and continuing as to all other matters, as the third party beneficiary of this Declaration, and the grantee of such license, City shall have the following rights:

4.2.1 City shall have the right, but not the obligation, to enter onto Jorgensen Lane and the Mountain Drive Easement Segment to monitor compliance with the Road Maintenance Obligation and the Fire Hydrant Testing Obligation, in order to access the Fire Suppression Facilities and test the same at such time and in such manner as the City shall determine in its discretion;

4.2.2 City shall have the right, but not the obligation, to enforce any "no parking" or similar restrictions at any location along Jorgensen Lane if at any time City believes it is in City's best interest, or in the best interest of the health and safety of the City residents, to do so; and

4.2.3 City shall have the right, but not the obligation, to tow or remove any vehicles at any time obstructing Jorgensen Lane or any fire or other emergency vehicle access on, over, across or through Jorgensen Lane if at anytime City determines in its sole discretion that it is appropriate to do so.

4.3 **Right to Enforce Obligations; Costs.** In addition to the other rights granted hereby, City shall also have the right, but not the obligation, to enforce the obligation of the Owners and the Association to perform the Road Maintenance Obligation and/or the Fire Hydrant Testing Obligation. If for any reason the Association fails to perform the Road Maintenance Obligation and the Fire Hydrant Testing Obligation, City may, but shall not be obligated to, either (a) enforce the obligation of the Association to perform the Road Maintenance Obligation and the Fire Hydrant Testing Obligation as provided in Section 4.3.1, or (b) actually perform the Road Maintenance Obligation and the Fire Hydrant Testing Obligation in the name of, and at the expense of the Owners as provided in Section 4.3.2.

4.3.1 Declarant recognizes that any violation of this Declaration or any failure of the Association or the Owners to comply with the Road Maintenance Obligation or the Fire Hydrant Testing Obligation could cause residents of the City irreparable harm and significant injury, the amount and likelihood of which may be extremely difficult to estimate, thus, making any remedy at law or in damages inadequate. Therefore, Declarant, the Association and each Owner by the acceptance of their deed to a Parcel shall be deemed to have agreed that the City shall have the right to obtain from any court of competent jurisdiction a temporary or permanent order or injunction, without the posting of a bond, restraining any breach or threatened breach of this Declaration or any failure of the Association or the Owners to comply with the Road Maintenance Obligation or the Fire Hydrant Testing Obligation and for any other relief the City deems appropriate. This right shall be in addition to any other remedy available to the City in law or equity.

4.3.2 Should the City, in its sole discretion, elect to perform the Road Maintenance Obligation and the Fire Hydrant Testing Obligation in the name of, and at the expense of the Owners, all costs and expenses whatsoever associated with the City's enforcement or performance of such obligations

("Enforcement Costs") shall be borne by the Association and each of the Parcel Owners in accordance with their Proportionate Share. Should the City incur any Enforcement Costs, it shall so notify the Owners. Each Owner shall then have thirty (30) days within which to re-pay the City the respective Owner's Proportionate Share of the Enforcement Costs. Should any Owner not re-pay the City within such thirty (30) day period, then the City may exercise the lien rights granted pursuant to Section 6.5, below against any such Owner.

4.4 No City Liability. Declarant, for itself and for each subsequent Owner, hereby acknowledges and agrees that City shall have or incur no liability whatsoever in connection with City's exercise of, or failure to exercise, any of its rights provided in this Declaration. The intent of Declarant is to provide the City with all rights and benefits that it would have if Jorgensen Lane were a public street, without the City incurring any of the duties or obligations which the City would incur if Jorgensen Lane were a public street prior to any acceptance of the Offer to Dedicate. Declarant, the Association and each Owner by the acceptance of their deed to a Parcel shall be deemed to have covenanted and agreed to the foregoing limitation of the City's liability and to have covenanted not to bring a claim, action or proceeding of any kind or nature whatsoever against the City based on the City's exercise or failure to exercise any of the rights granted hereby.

4.5 Indemnification of City. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Declarant, for its successors and assigns, the Association and the Owners each covenants and agrees with the City to investigate, defend, indemnify and hold the City, its officers, agents and employees harmless from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorneys' fees and other legal expenses) and causes of action of whatsoever character which City may incur, sustain or be subjected to on account of (a) loss or damage to property or loss of use thereof or bodily injury to or death of any persons arising out of or in any way connected with (1) the license granted to the City hereby, (2) the exercise of the City's rights hereunder, including any damage to persons or property that may result therefrom, or (3) the Owners' or the Association's failure to comply with the Fire Hydrant Testing Obligation or the Road Maintenance Obligation, (b) the City's enforcement of, or failure to enforce, the Fire Hydrant Testing Obligation or the Road Maintenance Obligation, or (c) the City's advancement of any Enforcement Costs.

5 FORMATION OF ASSOCIATION

Declarant hereby forms an unincorporated association, the purpose of which shall be (a) to coordinate the activities of the Declarant and its successors and assigns under this Declaration, (b) to implement and enforce the provisions of this Declaration, and (c) to preserve and maintain the Shared Improvements, and to collect and pay the Maintenance Costs. The name of the Association shall be the Jorgensen Lane Owners' Association.

5.1 Original Member. The original member of the Association shall be the Declarant.

5.2 Additional Members. Each person who at any time owns a Parcel described in Recital A, or any portion thereof, shall automatically become a member of the Association concurrently with acquiring ownership of such Parcel, or portion thereof.

5.3 Termination of Membership. Membership in the Association shall terminate when a member no longer owns an interest in a Parcel that is subject to this Declaration. Membership in the Association shall run with the Parcels that are subject to this Declaration and shall not be severed from such Parcels.

5.4 Meetings. Members of the Association shall meet at least annually on a date in the month of February selected by the President of the Association. Additional meetings of the Association may be called by the President of the Association or by any two members of the Association by giving not less than ten (10) days' written notice, if notice is sent by mail, or is delivered personally or is given by telefax or telephone.

5.5 Officers. The Association shall have a President and a Secretary, and at the discretion of the members may have a Treasurer and such other officers as the members determine to be appropriate. The officers of the Association shall be elected at the annual meeting of the Association and shall hold office until their successors are duly elected and qualified. Any officer may be removed from office by the vote of a majority of the Owners. Any vacant office may be filled by the vote of a majority of the Owners.

5.5.1 The Owners contemplate that the Owner of each Parcel shall serve, in turn, as President of the Association, in accordance with an equitable rotation of such office among the Owners of all Parcels. If a majority of the Owners are unable to agree on a President of the Association, then the President shall be that Owner holding the deed to a Parcel comprising a portion of the Property that was recorded earliest in time who is willing to serve.

5.5.2 The President of the Association shall not be entitled to any compensation for his or her services as President unless otherwise approved by the majority of the Owners from time to time.

5.6 Voting Rights. Each Owner shall be entitled to one (1) vote for each Parcel that is subject to this Declaration which is owned by such Owner in connection with any matter requiring the approval of the members of the Association. Should record title to any single Parcel be held in the name of more than one (1) Owner, then the vote for such Parcel shall be exercised in such manner as the common Owners determine among themselves, but in no event shall more than one (1) vote be cast with respect to each Parcel. If the common Owners of a Parcel cannot agree as to how their vote shall be cast, or should they endeavor to cast more than one (1) vote, then such votes shall be void and shall not be counted.

5.7 Powers. The Association shall have such powers as are necessary or proper to carry out the purposes and intent of this Declaration, and such other powers as are conferred on unincorporated associations by Sections 2000 et seq. of the California Corporations Code or as may be conferred on it by the Owners from time to time.

5.8 Association Action. Action may be taken by the Association either at meetings of the Owners or by written consent without a meeting. Any action approved by a majority of all of the Owners shall be binding on each of the Owners.

5.9 Assessments. The Association shall have the right to levy and collect assessments from the Owners for the purpose specified herein, in such amounts as are approved by a majority of the Owners or otherwise become payable pursuant to this Declaration.

6 MAINTENANCE COSTS

6.1 Several Liability. The Association shall be responsible for maintaining the Shared Improvements and performing the Road Maintenance Obligation and the Fire Hydrant Testing Obligation as provided by this Declaration. Each Owner of a Parcel shall be severally liable for his or her Proportionate Share of the Maintenance Costs as provided in this Declaration.

6.2 Reimbursement of Excess Over Proportionate Share. Should the Association pay any Maintenance Costs that are later reimbursed by other property owners with respect to the costs associated

with the Mountain Drive Easement Segment, then each Owner shall be reimbursed its Proportionate Share of the amount reimbursed.

6.3 Payment for Work. All Maintenance Costs shall be paid from the funds on deposit in the Reserve Fund. If there are insufficient funds available in the Reserve Fund to pay any Maintenance Cost that has been incurred, then each Owner shall pay his or her Proportionate Share of any estimated deficiency within thirty (30) days after the date on which the expenditure creating the estimated deficiency has been approved by the Owners. Each Owner shall pay his or her Proportionate Share of the unpaid balance of any actual deficiency remaining after the proposed work has been completed within ten (10) days after receipt of an invoice therefore.

6.4 Delinquent Payments. Should any Owner fail either (a) to make any required contribution to the Reserve Fund, or (b) to pay his or her Proportionate Share of any Maintenance Cost required to be paid by such Owner within ten (10) days of the date on which such contribution or payment is first due (a "Delinquent Owner"), then such Delinquent Owner shall pay a late payment penalty in an amount equal to six percent (6%) of the delinquent payment, and such delinquent payment and the late charge shall thereafter bear interest at the maximum rate permitted by law at the time the delinquency occurs until paid in full.

6.5 Reciprocal Lien Rights: Delinquency in Contribution for Recurring Carrying Costs. Pursuant to the provisions of Sections 2881, 2883 and 2884 of the California Civil Code, each Owner (herein, a "Grantor Owner") hereby grants (a) to the other Owners a special lien, as defined in Section 2875 of the California Civil Code, on the Parcel owned by the Grantor Owner for the purpose of securing the obligation of the Grantor Owner to pay its Proportionate Share of any contribution approved pursuant to this Declaration, and hereby grants to the other Owners a power of sale for the purpose of foreclosing upon such lien following a breach of such obligation, and (b) to the City a special lien, as defined in Section 2875 of the California Civil Code, on the Parcel owned by the Grantor Owner for the purpose of securing the obligation of the Grantor Owner to re-pay the City the Owner's Proportionate Share of any Enforcement Costs incurred by the City pursuant to this Declaration, and hereby grants to the other City a power of sale for the purpose of foreclosing upon such lien following a breach of such obligation. Subject to the provisions of Section 6.5.4, below, the lien created pursuant to this Section 6.5 shall be prior to all other liens recorded subsequent to the Notice of Non-Payment and Claim of Lien recorded pursuant to Section 6.5.2, below.

6.5.1 Failure to Contribute. The President or Secretary of the Association or the City, as applicable, shall give a Notice of Delinquency to an Owner who has not paid any amount which such Owner is obligated to pay pursuant to this Declaration, within thirty (30) days after such payment first became due. An Owner who fails to make such payment within thirty (30) days following receipt of a Notice of Delinquency shall be in default in its obligations under this Declaration and shall be a "Defaulting Owner".

A Advance by Association or Non-Defaulting Owners. From and after such date, any Owner who is not a Defaulting Owner or the Association (either, an "Advancing Party") shall be entitled to advance the necessary funds on behalf of the Defaulting Owner.

B Loan to Defaulting Owner. The amount so advanced (and any sums payable pursuant to this Declaration as collection costs and interest with respect to the amount so advanced) shall constitute a loan from the Advancing Party to the Defaulting Owner. Such loan shall be repayable by the Defaulting Owner to the Advancing Party, with interest on the unpaid principal balance, from the date on which such funds are advanced by the Advancing Party until paid in full. Such interest shall be at a variable rate per annum equal to the lesser of (i) the prime lending rate (as in effect from time to time) of the principal banking institution being used by the Association for the deposit of the Reserve Fund, plus three percent (3%), or (ii) the maximum rate permitted by law.

6.5.2 Security for Repayment. The obligation of a Defaulting Owner to repay any loan or advance made by the Advancing Party for the benefit of a Defaulting Owner, plus interest as provided for by this Agreement, or to pay the City its share of any Enforcement Costs, in each case including the reasonable costs of collection, shall be secured by a lien on the Defaulting Owner's Parcel granted pursuant to this Section 6.5. Prior to enforcing such lien, the Advancing Party or the City, as applicable, shall record with the County Recorder of the County in which the Property is located a Notice of Non-Payment and Claim of Lien setting forth (a) the amount of any sums payable pursuant to this Declaration, including all collection costs and interest, (b) a description of the Parcel against which the lien is imposed, including both a legal description and the street address of such Parcel, (c) the name of the Owner of the Parcel against which the lien is imposed, and (d) if the lien is to be enforced by non-judicial foreclosure through the exercise of the power of private sale, the name and address of the trustee authorized by the Advancing Party or the City, as applicable, to enforce the lien by such power of sale. The Notice of Non-Payment and Claim of Lien shall be signed by the Advancing Party, the President of the Association, or an authorized representative of the City. Upon payment of the sums specified in the Notice of Non-Payment and Claim of Lien, the person or entity causing such Notice to be recorded shall cause to be recorded a further notice stating the satisfaction of such claim and the rescission of such Notice.

6.5.3 Enforcement of Lien. The lien created pursuant to this Section 6.5 may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Non-Payment and Claim of Lien, or sale by a trustee substituted pursuant to Section 2934(a) of the California Civil Code. Any sale by the trustee shall be conducted in accordance with the provisions of Section 2924 of the California Civil Code applicable to the exercise of a power of sale in mortgages and deeds of trust.

A Nothing in this Section 6.5 or in Section 726 of the California Code of Civil Procedure shall be construed to prohibit an action directly against the Owner to recover sums for which a lien is created pursuant to this Section 6.5 or to prohibit the Advancing Party or the City from taking a deed in lieu of foreclosure.

B Any action brought to foreclose a lien established pursuant to this Section 6.5 shall be commenced within one (1) year following the date of recordation of the Notice of Non-Payment and Claim of Lien.

6.5.4 Subordination of Lien for Advances by Owners. Notwithstanding any other provision of this Declaration to the contrary, any lien created or claimed under the provisions of this Declaration to secure any payment or other obligation provided in this Declaration is expressly made subject and subordinate to the rights of any mortgage or deed of trust that encumbers the Property or an undivided interest in the Property made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such mortgage or trust deed unless the secured lender expressly subordinates its interest in writing to such lien.

7 RESERVE FUND

7.1 Creation of Fund. A reserve fund shall be established by the Association for the purpose of holding and accumulating funds to defray the Maintenance Costs (the "Reserve Fund"). Such Reserve Fund shall constitute a trust fund, and shall be deposited into an interest-bearing trust account established pursuant to Section 9, below.

7.2 Contributions to Reserves.

7.2.1 Within thirty (30) days after the conveyance by Declarant of the third Parcel, the Association shall hold its first meeting. At such meeting, the Association shall determine, by majority vote of